The decision is by an evenly divided court. The dissenting judges seem to adopt the better line of reasoning, which is borne out by a long line of decisions. *Teschemacher et al.* v. *Thompson et al.*, 18 Cal. 11. When Mexico gained her independence it was declared that all inhabitants, including Indians, should be considered citizens, and that the property of every citizen should be respected and protected. *Treaty of Guadalupe Hidalgo.* Mexicans who, previous to the acquisition of California by the United States, had acquired title to lands from that government, and who chose to remain, held such title and were protected the same as if no change in sovereignty had occurred. *Phelan et al.* v. *Poyoreno et al.*, 74 Cal. 448.

The defendants relied upon *Byrne* v. *Alas*, 74 Cal. 628, which is an almost parallel case. Here, as in the case under consideration, the appellants failed to present their claim to the land commissioners. The court held that it was not necessary, and that they were not even charged with knowing that there was such a commission.

C. J., Beatty, who dissented, pointed out that the only difference in the case under review and *Byrne* v. *Alas* was that there was no provision quoted, that the plaintiff took the land subject that he should in no way disturb nor molest the Indians who were living thereon. But he calls attention to the fact that the plaintiff should not interfere with roads or other "servidumbres," and that the word "servidumbres" had a meaning in Spanish law broad enough to include the right of occupancy claimed by the defendants.

In addition to the above, another of the dissenting judges contended that the defendants would still have had the right to occupy the land had there been no express reservation, for the Indians being mere wards of the nation, it is to be presumed that the nation has always recognized and protected their customary rights, and that all grants are made with the understanding that grantees know those rights, and take subject to them.

RAILROADS—INJURY TO ADJOINING LAND—SYRACUSE SOLAR-SALT CO. v. ROME, W. & O. R. R. Co., 60 N. Y. Sup. 40.—Where a railroad company operated under statute and municipal license its track upon a city street, and thereby cart such dirt, cinders and soot upon the plaintiff's premises adjoining, as to cause him great damage in the prosecution of his business, the manufacture of salt, diminishing its quantity, quality and value. *Held*, that the plaintiff was entitled to compensation.

The defendant in this case relied, with apparent reason, on the case of *Forbes* v. *Railroad Co.*, 121 N. Y. 505. It was held in that case that a railroad operating its road under proper authority upon a city street, took no adjoining property and was not liable to the owner of such property for any consequential damages resulting from a natural use of the road for railroad purposes.

But that decision is now limited by this case, the court saying that it is a "very broad statement of the rule and must be taken with some qualification."

The Legislature may authorize a small nuisance, but where it greatly exceeds the nature of an inconvenience and causes great damage, compensation must be allowed.

The court holds that this case presents the fact of a taking of plaintiff's property, because proprietary rights must be considered here as valuable property. *Arimond* v. *Green Bay, etc., Co.*, 31 Wis. 316, 335. Such use is an easement on the plaintiff's property. *2 Washburn on Real Property*, 4th Ed. 299; *Long Island R. R. Co.* v. *Garvey*, 159 N. Y. 338.

SALE OF LIQUOR BY DRUGGIST — TOWN ORDINANCE — PEOPLE V. BRAISTED, 58 Pac. Rep. 796 (Colo.).—A town attorney furnished a person with money to purchase liquor from a druggist who had no permit. By such a sale the druggist would violate a town ordinance. *Held*, that the town could not recover a penalty for a violation of its ordinance instigated and procured by its officer.